

Case No.

S139389

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
nonprofit religious corporation,

Petitioner,

vs.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF MARIN,

Respondent.

GERALD ARMSTRONG,

Real Party in Interest.

Appellate Court No. A107095
Consolidated with Case No.
A107100

Trial Judge: Hon. Lynn Duryee
Marin County Superior Court
Case No. CV 021632
Consolidated with Case No.
157680/152229.

**SUPREME COURT
FILED**

NOV 28 2005

Frederick K. Onirich Clerk

Deputy

**PETITION FOR REVIEW
AFTER DECISION OF COURT OF APPEAL,
FIRST APPELLATE DISTRICT**

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I.

PETITION FOR REVIEW

TO THE HONORABLE CHIEF JUSTICE AND THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Gerry Armstrong, defendant and real party in interest, respectfully petitions
for review following the unpublished decision of the Court of Appeal, First
Appellate District, by Hon. Maria P. Rivera, Associate Justice, filed on October
19, 2005.

II.

ISSUES PRESENTED FOR REVIEW

1. Whether any California courts have jurisdiction to enforce a contract that prohibits and punishes an individual's religious expressions about a religion because such prohibition and punishment have gone on too long to be stopped, or for any other reason.

2. Whether California courts have jurisdiction to prohibit and/or punish religious expressions of a foreign national expressed in foreign nations, and which are not threats to public safety, order or national security in California or anywhere.

3. Whether the Court of Appeal has jurisdiction to reinstate punishment that the trial court had ruled an unconscionable result of the application of certain unconscionable contractual clauses, without affording the victim or intended victim of that unconscionable punishment the reasonable opportunity *mandated* by C.C.C. §1670.5 to present evidence as to that contract's commercial setting, purpose and effect to aid the trial court in making or remaking that ruling.

4. Whether the Court of Appeal has jurisdiction to misstate the language and meaning of a trial court's rulings in order to facilitate the vacating of one of those rulings, particularly where the result of such vacating is not justice, but what has already been ruled unconscionable.

5. Whether any California court may punish an individual for properly reporting a crime, even if such reporting violates the language and/or meaning of a contract or court order.

6. Whether any California courts have jurisdiction to enforce a contract and an injunction that are patently unlawful, and/or impossible to perform.

7. Whether California courts have jurisdiction to end an international idiocy that is the unconscionable result of thirteen years of the California courts' abetment in the application of unconscionable contractual clauses concocted and enforced by a religion.

III

SUMMARY OF REASONS FOR REVIEW

This is an extraordinary moment in a more than 23-year campaign by the Scientology religion, using the California court system, to deprive Gerry Armstrong, an individual, religionist, and persecuted religious class member, of his basic human rights, particularly his religious freedom, and, here immediately, his physical freedom and safety.

This Court is where this case belongs, because it concerns the whole State of California and what will be the whole State's highest wisdom about religious freedom for all its citizens. This Court has the opportunity to decide something about the extent to which California's courts may be used by California's religious corporations to deprive individuals of that freedom or in other ways persecute them pursuant to religious doctrine and religious hatreds.

This State is also where plaintiff and petitioner Scientology organization is headquartered. Scientology around the world is controlled, operated and exported from California by David Miscavige, a California resident.

This Court can decide in this case if the California Wog Justice System will confront the Scientology organization and curtail its use of the State's courts to suppress and destroy basic human rights and persecute the organization's victims, or if Scientology will continue to have its way with California's courts. "Wog" is the term Scientologists use for people who are not Scientologists. Society is called in Scientology the "wog world," and nations' legal systems and procedures are called "wog justice."

There are no similar cases in California or anywhere. There *are* other Scientology *contracts* that prohibit *other* people, many in California, on threat of massive liquidated damages penalties and jailing, from discussing their religious experiences in the Scientology religion. None of those contracts, however, have been the subject of the enormous volume of documentation and litigation

generated in *Scientology v. Armstrong*, or achieved such global notoriety. Scientology's Armstrong contract is Exhibit 1 to Scientology's exhibits in support of its writ petition ("Exs."), pp 1-16.

This then is a representative and leading case in a completely new area of life and law in California and around the world; namely, religious corporations' suppression and deprivation of individual religious freedom and other basic human rights by contract, and by judicial enforcement of such contracts. Such contracts are themselves a very modern invention of the religious corporation's modern corporate lawyers. The deeply evil intent of such contracts makes them particularly difficult to confront, and thus particularly suited to the high confront of the highest court in the State in which these contracts are concocted and their enforcement directed by resident enforcers.

This Court has the opportunity to correct the bizarre and impossible situation, which the Court of Appeal ignored, of California courts prohibiting and punishing religious expressions made by foreign nationals in foreign nations. The only jurisdiction California courts could possibly have in this situation is the jurisdiction to deny jurisdiction to prohibit and punish such religious expressions.

The contractual clauses Scientology seeks to enforce against Armstrong, and their judicial enforcement, including what Scientology seeks by writ petition, are obviously barred within the U.S. by the civil rights guarantees, including freedom of religion, in the U.S. and California Constitutions, and in the nation's other laws. Reciprocally, whatever Armstrong has said, written or done within the U.S, for which Scientology has ever sought or is seeking in this immediate matter to have him punished, are his religious expressions in exercise of his religious freedom, and are inalienably protected by the same constitutions and the nation's and the state's other laws. Court after court in California has refused to honestly confront this reality, and acknowledge the indefeasible truth that what Scientology seeks and has gotten away with judicially in its campaign against Armstrong is

unlawful. Some court some time will have to confront this issue and this Court at this moment in time has jurisdiction to do so.

Armstrong obviously is *not* voluntarily giving up his basic human rights to Scientology, including his rights to freedom of speech, freedom of religion, freedom of association, freedom of movement, due process, self-defense, and freedom from slavery. Armstrong is protesting every step of the way, declaring that he was forced against his will to sign Scientology's contract, and vowing to never give up those rights. He believes that Scientology's contract and what has been done to enforce the conditions against Armstrong that deprive him of those basic human rights are the fruits of a criminal conspiracy in violation of U.S. Civil Rights criminal statutes, specifically 18 U.S.C. §241, conspiracy against rights, and §242, deprivation of rights under color of law.

The Court of Appeal's decision ignores this issue and these laws completely, although Armstrong put them squarely and properly before the Court in his briefs. This Court can now decide if a participant corporation in an ongoing criminal conspiracy may by contract lawfully prohibit the ongoing victim of that criminal conspiracy from discussing that criminal conspiracy and the crimes being perpetrated on him. May the California courts lawfully be used to enforce such a contract against such a victim of such a criminal conspiracy, which is proven to be a criminal conspiracy by its own contract and actions to enforce that contract in these courts? Does Armstrong actually have a duty to violate any orders of California's courts that compel him to participate in and forward Scientology's criminal conspiracy by playing its victim in that criminal conspiracy?

The *International Religious Freedom Act of 1998* ("IRFA") 22 U.S.C. §§ 6401-6481 is the guiding law and principle for the whole of the U.S., not excluding California, in relation to freedom of religious expressions such as Armstrong's expressed by foreign nationals such as Armstrong in foreign countries such as Canada where Armstrong lives. The IRFA also provides an understanding of why even in the U.S. people may not be deprived of their

religious freedom by contract, and punished for their religious expressions about religions in the way Scientology wants Armstrong to be punished. The IRFA was enacted in fact specifically to protect people in positions and classes just like Armstrong's who are targets of religious persecution right now in present time just like Armstrong. The Court of Appeal's decision is completely alone in its opposition to and disregard for the IRFA's letter and spirit.

For Armstrong, as long as he is outside the U.S., his religious expressions and his basic human rights are protected by the *Canadian Charter of Rights and Freedoms, Constitution Act*, (1982) and by the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1998). Similarly, Scientology is prohibited by these same human rights charters from depriving Armstrong of his basic human rights in non-U.S. nations, and prohibited from punishing Armstrong for his religious expressions. The *European Convention* and other international human rights charters are identified in the IRFA at 22 U.S.C. §6401(a)(2). In this matter this Court can rationally and decisively align California law and decisions with the 8-year old IRFA, and with the international human rights charters of the world the IRFA endorses. Say what is true, fair and wise to guide any California Court that in the future finds its power and authority being used to punish other foreigners for their religious expressions expressed in foreign countries.

Although this case is all about the unlawful deprivation of human rights, it is positioned at this time as a contract case, and clearly the law that the trial court applied to the case and facts before that court was C.C.C. §1670.5. The trial court ruled that the punishment Scientology sought to inflict on Armstrong, including jailing and fining him, as the result of the application of the subject contract's clauses, was unconscionable.

Armstrong has found no other cases where what was determined to be an unconscionable result was the contractual wholesale deprivation of an individual's freedom of religion, and his other basic rights and protections. It is doubtful that

such cases exist because these contracts are such new devices in the programs and campaigns of new religious corporations to judicially suppress and destroy basic human rights for individuals. This Court has the golden opportunity to stop these contracts and their judicial enforcement from becoming de rigueur in California's courts.

The Court of Appeal's decision fails to apply C.C.C. §1670.5, in fact avoids addressing or even mentioning that governing statute, the applicability of which Armstrong had addressed at considerable length in his opposition to Scientology's petition for writ ("Opp."), in his respondent's brief ("RB") in Scientology's appeal consolidated in the Court of Appeal with its petition, and in his petition for rehearing. ("Pet.Reh.") The Appellate Court's failure to apply the proper California statute, and that Court's failure to apply the procedural remedy that statute mandates, has resulted in the reinstatement of the punishment that the trial court, by proper application of C.C.C. §1670.5, had already ruled unconscionable and consequently remitted.

The Court of Appeal's reinstatement of the unconscionable result, which had already been ruled unconscionable, is particularly unconscionable because to reach its decision the Court of Appeal has had to misstate the language and meaning of the trial court's unconscionability judgment. The Court of Appeal also ignored the effect of Scientology's voluntary dismissal of its appeal from the trial court's judgment on the unconscionable punishment the Court was reinstating.

The dismissal of the appeal, which Scientology had successfully moved the Court of Appeal to consolidate with this writ petition case, ended any possible nonacceptance by Scientology of the unconscionability judgment. That judgment then *required* acceptance of the remission of the unconscionable punishment that Scientology sought by its writ petition to have reinstated. Obviously every California court including this Court has a duty to prevent an unconscionable result in any matter properly before it.

IV

HISTORY OF THE CASE

Armstrong was a member of the Scientology religion from 1969 through 1981. When he left, Scientology declared him a member of a class of citizens called “Suppressive Persons” or “SPs,” whom Scientologists are directed by Scientology religious scripture to persecute opportunistically, or “fair game.” Scientology teaches in its “Suppressive Person” doctrine that SPs are evil, insane, destructive, and irreversibly mentally handicapped, should be given no civil rights, and are to be “hated,” “shattered” and “obliterated.”

Over the next almost 24 years, and continuing to this day, Scientology and its agents fair gamed Armstrong in accordance with the organization’s “Suppressive Person” doctrine. These fair game attacks include, *inter alia*, physically battering Armstrong on six occasions; running into him bodily with a car; terrorizing him on a highway in California and an autobahn in Germany; attempting multiple times to have him charged criminally on false evidence, including with the Los Angeles District Attorney, the FBI, and the prosecutor in Ekaterinberg, Russia; suing him six times; driving him into bankruptcy; running covert intelligence operations on him; attempting to entrap him in sting operations; filing numerous false statements about him in legal proceedings; breaking into his car and stealing extremely valuable documents and artwork; terrifying his neighbors and his family; threatening to assassinate him; forging hundreds of Internet postings, including racist postings, over his name; and creating and disseminating countless black propaganda attacks on him around the world, including to government agencies, media and the clergy. Pet.Reh., Opp, 4,5; RB, 9-30; Respondent’s Appendix (“R.App.”) 261:25-262:14. Black propaganda or black PR is Scientology’s fair game policy and practice of destroying SPs’ reputations, credibility, relationships, livelihoods and lives with the relentless, widespread covert and overt dissemination of false and defamatory materials about the SPs.

Scientology filed its first suit against Armstrong in August 1982 in Los Angeles Superior Court for conversion, breach of fiduciary duty and invasion of privacy, and Armstrong filed a cross-complaint for, *inter alia*, fraud and intentional infliction of emotional distress. Scientology's suit went to trial in 1984 resulting in a judgment in Armstrong's favor, which Scientology appealed. *Scientology v. Armstrong*, (1991) 232 Cal.App.3d 1060, 283 Cal. Rptr. 917.

Armstrong's cross-complaint was settled in December 1986 as part of a global settlement involving some 20 clients of attorney Michael J. Flynn, then of Boston, Massachusetts. Mr. Flynn was also a "Suppressive Person" and also the target of Scientology fair game attacks, including, *inter alia*, infiltrating his office; paying known criminals to testify falsely against him; suing him and his office some fifteen times; framing him with the forgery of a \$2,000,000 check; and black PRing him internationally. Scientology got Mr. Flynn, who was also Armstrong's employer and friend, and who settled his own claims against Scientology in the global settlement, to act as its agent to trick and force Armstrong to sign Scientology's settlement "contract" in order to have the fair gaming of Mr. Flynn, his family and clients end.

Scientology did not leave Armstrong in peace following the 1986 global settlement but has continued to fair game him ever since. The organization's attacks before he ever responded, or ever spoke out publicly against these attacks, included generating and disseminating black PR on him publicly and internationally; filing numerous sworn statements about him in legal proceedings falsely accusing him of crimes and perversions; distributing an unlawful secret video of him; blackmailing him with threatened publication of his private writings; filing a false declaration he had been forced to sign as part of the "settlement;" and threatening him with prosecution if he honestly testified pursuant to a deposition subpoena properly served on him in late 1989 in a third party's California litigation.

From 1990 until now, Armstrong has spoken about his Scientology-related experiences, knowledge and beliefs as called by God, even though that would cause Scientology's leaders to escalate their fair game campaign against him. He never believed that the contractual clauses that prohibited his discussing his Scientology-related experiences, knowledge and beliefs were lawfully judicially enforceable. He has also, as was safe, courteous and wise, assisted his fellow SPs, whom he knows to be a threatened religious class, even though any such assistance is prohibited by Scientology's contract. He has found it impossible after a certain point to deal insanely with Scientology and its attacks on peace, justice and sanity, and he believes that no court can lawfully compel him to be or act insane.

In 1991, Scientology filed a motion in LA Superior Court to enforce its contract against Armstrong, which was denied. In 1992 Scientology filed a lawsuit to enforce its contract in Marin County, where Armstrong was then living and working. Scientology obtained a series of summary adjudication rulings from Marin Superior Court Judge Gary W. Thomas, eliminating all Armstrong's properly pled affirmative defenses, and culminating in a judgment and injunction against him in 1995. Exs. 85-93.

Judge Thomas ruled that the contract's liquidated damages clause that required Armstrong to pay Scientology a penalty of \$50,000 per utterance about his Scientology experiences or knowledge was reasonable and enforceable. He ordered Armstrong to pay \$300,000 for 6 utterances and \$334,671.75 in costs. Armstrong discharged this sum in bankruptcy in 1996.

Judge Thomas ruled that Scientology and all the beneficiaries of its contract could say whatever they wanted about Armstrong, no matter how false or abominable, and he could not respond. See, the contract, Ex. 1, para. 1, for the list of beneficiaries. If Armstrong responded to Scientology's attacks, to defend himself, his family, friends or co-religionists, or if he assisted any victim of

Scientology in any way, he would have to pay Scientology \$50,000 per utterance or assistance.

Judge Thomas ruled that the \$50,000 liquidated damages penalty was *per recipient*, and that a single letter Armstrong copied to 18 people would cost him \$900,000.

Judge Thomas stated in his injunction that all these penalties and prohibitions applied not only Armstrong but also “his agents, employees, and persons acting in concert or conspiracy with him.” Since then, Scientology has threatened several Suppressive Persons with enforcement of the Thomas injunction against them for “acting in concert” with Armstrong.

Judge Thomas completely avoided addressing the religious freedom defense, which was squarely and properly before him, and seriously misstated the law he found controlling to justify that improper avoidance.

Armstrong appealed. See case No. A075027, which Armstrong incorporated into his opposition to Scientology’s writ petition and in his respondent’s brief in the consolidated cases in the Court of Appeal.

At the beginning of 1997, because of threats from Scientology, Armstrong left California and returned to British Columbia, Canada, where he is a citizen. A few days before he left California, he was served with a subpoena *duces tecum* by the wog defendant in a Scientology-related case in U.S. District Court in San Jose. The subpoena specifically commanded Armstrong to produce declarations he had authored concerning unlawful acts by Scientology. The next day a Scientology attorney faxed Armstrong a letter threatening him with prosecution if he produced the subpoenaed documents. Armstrong wrote a declaration concerning the threat and sent it to the judge presiding in the U.S. District Court case in which Armstrong had been served and threatened.

While Armstrong was in B.C., and without service on him or notice to him, Scientology got Marin Superior Court Judge Thomas to sign an OSC re contempt and a contempt order against Armstrong for sending the declaration to the U.S.

District Court Judge. The contempt order makes no mention of Armstrong's being served to produce the documents he produced including the subject declaration, and makes no mention of Scientology's attorney threatening Armstrong and thus causing him to create and transmit the declaration reporting that threat. Judge Thomas punished Armstrong with 2 days in jail and a \$1000 fine.

In August 1997, while in B.C., Armstrong timely filed his appellant's opening brief in his appeal from the injunction and judgment. Scientology moved the Court of Appeal to dismiss his appeal on the basis of the fugitive disentitlement doctrine. Mysteriously, the Court of Appeal, First Appellate District, Division Four, mistook a request from Armstrong for an extension of time to file an opposition to Scientology's motion for an opposition, and in December 1997 dismissed the appeal.

Also in December 1997, Scientology got Judge Thomas to sign another OSC re contempt against Armstrong for 13 expressions of his religious experiences with the Scientology religion, which he expressed on the Internet or in public conversations in Canada, the U.K. and Germany. In February 1998, Judge Thomas signed a contempt order punishing Armstrong with 26 days in jail and a fine of \$2,600.

In November 2000, Scientology filed another application for an OSC re contempt against Armstrong for 131 Internet expressions of his religious experiences with the Scientology religion expressed in Canada, for permitting himself to be subpoenaed to testify in a Scientology-related case in Florida, and for expressions of his religious experiences with the Scientology religion expressed in Florida and Denmark. Armstrong filed an opposition to Scientology's OSC, acknowledging that he had expressed thousands of such expressions, and defending his legal right and religious freedom to do so. In July 2001, Marin Superior Court Judge Vernon F. Smith, who had inherited the Scientology v. Armstrong case after Judge Thomas retired, signed an order finding Armstrong in contempt, but did not impose any punishment.

On April 2, 2002 Scientology filed another lawsuit in Marin Superior Court, CV 021632, against Armstrong, Robert Minton and the Lisa McPherson Trust, seeking \$10,050,000 from Armstrong for 204 “breaches” of Scientology’s “contract.” The 204 claimed “breaches” included the 131 Internet postings identified in Scientology’s November 2000 application for OSC, plus 73 additional “breaches,” including religious expressions expressed in Canada, France, Denmark, Germany and Russia. Armstrong, who was then living in Germany, timely filed his answer in November 2002. Exs. 211-295

Scientology filed a motion for summary judgment claiming there was no triable issue of fact because Armstrong had admitted committing the “breaches,” and seeking \$50,000 for each “breach.” Armstrong opposed the summary judgment motion, and in March 2004 Marin Superior Court Judge Lynn Duryee denied the motion. Scientology moved to strike Armstrong’s evidence in support of his opposition, and Judge Duryee denied that motion.

On April 9, 2004 Judge Duryee conducted a trial of Scientology’s complaint, during which, with the agreement of Scientology and Armstrong’s attorney Ford Greene, she consolidated the earlier cases, Marin Superior Court Nos. 152229 and 157680, with the later CV 021632 case. Judge Duryee also stated that she was considering the trial a hearing as well on the contempt punishments in the earlier cases.

After opening statements from Scientology and Armstrong, Judge Duryee ruled that the punishment Scientology sought to inflict on Armstrong beyond the benefit that was conferred to him in the 1986 settlement was unconscionable. She believed, albeit erroneously, that the benefit conferred to Armstrong was \$800,000. She therefore stated her judgment awarding Scientology \$500,000 in liquidated damages, since Scientology had already been awarded \$300,000 in liquidated damages by Judge Thomas, and she remitted, or discharged, the contempt punishments jailing and fining Armstrong.

Upon Judge Duryee rendering her judgment at trial, Scientology entreated her to punish Armstrong for the approximately 135 violations of Judge Thomas' injunction for which Judge Smith had found Armstrong guilty in 2001, but had not specified a punishment. Judge Duryee then sentenced Armstrong to five days in jail and fined him \$1000, but made the fine concurrent with her judgment, and discharged that jail sentence as well.

Because for a period of some weeks after the trial Scientology's attorney and Mr. Greene could not agree on the language of proposed written orders to be submitted to Judge Duryee for signing and filing, on May 20, 2004 she issued her own orders. Exs. 17,18. Scientology received the orders from the Marin Court, but Mr. Greene did not receive them at that time, and did not know of their existence until July 12, 2005.

On July 15, 2005 Scientology filed its petition for writ of certiorari or writ of mandamus in the Court of Appeal seeking to have the jail sentences and fines reinstated, and filed its notice of appeal seeking to have reversed the judgment of unconscionability that limited the liquidated damages penalties. Simultaneously, Scientology filed a motion to consolidate its appeal and writ petition on the ground that the evidence and the legal questions presented by both matters are so related as to make it advisable to consolidate them. The Court of Appeal granted the motion.

Armstrong timely filed his respondent's brief and his opposition to Scientology's writ petition. On September 2, 2005 Scientology requested the Court of Appeal to dismiss its appeal. On September 8, the Court of Appeal dismissed Scientology's appeal, but kept the writ petition alive and scheduled for oral argument.

On September 21, 2005 the Court of Appeal, First Appellate District, Division Four, conducted oral argument. On October 19, 2005 the Court of Appeal filed its decision, appended hereto, granting Scientology's writ petition

and reinstating the jail sentences and fines against Armstrong that Judge Duryee had remitted.

On November 3, 2005 Armstrong timely filed his petition for rehearing, and on November 14 the Court of Appeal denied his petition.

V

ARGUMENT

1. By their failure to address the profound religious freedom issue and defense in this case, the California Courts since 1992 have prostrated themselves to unlawfully abet religious persecution.

The California courts that have dealt with Scientology's contract cannot but know about the towering religious issue and defense in this case, which have through time towered ever higher. The filed documents before these courts are filled with the religion issue and Armstrong's religious expressions about the religion issue and freedom of religion defense and about religion itself. See, e.g. Pet.Reh. Opp., RB.

In denying Scientology's motion to enforce its contract against Armstrong in 1991, Los Angeles Superior Court Judge Bruce R. Geernaert stated about the contract and Scientology's enforcement intention:

that is one ... I'll say one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms if I had been asked to, even on the threat that, okay the case is not settled. I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest. RB, 48; Clerk's Transcript, prior appeal No. A075027, 7700.

An unavoidable and overwhelming real life reason that rendered the order Scientology sought not fair and not in the public interest is the eternal fact that it is a *religion* that seeks to prostrate the secular wog court system for the unlawful purpose of suppressing the *religious* expressions of a *religious apostate* and punishing and crushing that *religious apostate*.

In 1992, Scientology filed the lawsuit to enforce its contract that has resulted in the jail sentences and fines against Armstrong that the Court of Appeal's October 19, 2005 order has now reinstated. Between 1992 and now Scientology found a number of judges, notably Judge Thomas in Marin County, who were willing, for unknown reasons, to prostrate the California court system to permit and abet Scientology's religious persecution campaign.

Judge Thomas accomplished the abetment of Scientology's religious persecution of Armstrong in 1995 in no small part by avoiding the whole religious freedom issue and defense, even though it was colossally and unmissably then before him. As Armstrong protested in his earlier appeal and elsewhere, Judge Thomas altered the language and meaning of the case he cited to, *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319, to wipe out *all* Armstrong's First Amendment defenses. Pet.Reh. 9-13.

As can be imagined by the plaintiff's name, that case was not about a person's religious expressions about his religious experiences in a religion. *Dooley* was about the disclosure of trade secrets to a commercial telecommunications industry competitor. *Dooley* states, "it is possible to waive even First Amendment free speech rights by contract." Judge Thomas stated: "First Amendment: First Amendment rights may be waived by contract."

Armstrong's position is that because of the nature of religion and of First Amendment *religious* rights such rights may *not* be waived by contract. He believes that the failure of all California Courts to confront the religious freedom issue in this case over the past many years validates that position, rather than invalidates it.

In 1997, the Court of Appeal abetted Scientology's religious persecution campaign with its not fair and not in the public interest dismissal of Armstrong's appeal of Judge Thomas' orders that abetted that persecution campaign. It should

be noted that this dismissal was engineered by Scientology on the grounds that Armstrong had not served the very jail sentence that in 2004 Judge Duryee ruled unconscionable and remitted. It is no human wonder that the Court of Appeal division that dismissed Armstrong appeal would have some interest in reinstating that unconscionable punishment, and perhaps even could go to the lengths that division has gone to accomplish that reinstatement.

In 2004, Judge Duryee, while still not articulating the reality of Scientology's religious war on Armstrong, and the reality of his religious freedom right and that right's inalienability, at least limited and slowed down the judicial religious persecution campaign against Armstrong by declaring the punishment Scientology sought to inflict on Armstrong an unconscionable result, and remitting that unconscionable result.

Now for some unholy reason a California Court of Appeal tribunal is reprostrating the California court system, which Judge Duryee had uplifted for the previous 19 months, and is again back to abetting Scientology's religious war on Armstrong by issuing another order in that war that is not fair and not in the public interest. The Court of Appeal's order is not fair and not in the public interest for the very reason that it abets Scientology in its religious war on Armstrong, which war the Court of Appeal ignores in order to author its unfair order.

While mentioning that Armstrong claimed that the subject expressions for which Scientology sought to have him jailed and fined were expressions protected by the right to the free exercise of his religion, the Court of Appeal gave that fact no value or effect, ruling that "Armstrong, however, is foreclosed from challenging the merits of the contempt orders in this writ proceeding." The Court of Appeal even acknowledges, however, that "in unusual cases ... either the trial or appellate court may grant a remission of punishment." A case could not even be deemed unusual, and certainly remission could never be reached in any kind of case, if the merits of the contempt order could never be challenged. Here there is also the overarching factor of the adjudicated unconscionability of the contempt

punishments, and no judge can be foreclosed by any length of time from acting to limit, prevent or remit an unconscionable result.

Armstrong challenged the merits of the contempt orders in many documents filed in the trial court, all properly before Judge Duryee. These challenges to the merits all included Armstrong's proclamation and evidence that the expressions for which Scientology wanted him jailed and fined were his religious expressions in free exercise of his right to freedom of religion. On the basis of Armstrong's challenging of the merits of the contempt orders for all the reasons he challenged them, Judge Duryee found the punishment they ordered unconscionable and she remitted that punishment.

The challenges to the merits of the contempt orders that Judge Duryee had in the record before her, could not but be part of the record before the Court of Appeal. Consequently, Armstrong could not be foreclosed from pointing the Court of Appeal to those challenges and reasserting those challenges already in the record that Judge Duryee obviously found to be good grounds for remission of the unconscionable punishment the contempt orders inflicted.

To justify its "foreclosure" of Armstrong from "challenging the merits of the contempt orders" in the Court of Appeal, that Court had to find that "there were no circumstances in the record justifying a remission of the sentences." This is a gross error that demands correction. The trial court record is filled with circumstances justifying the trial court's remission of the sentences, including the facts that a religion had obtained those sentences as part of its campaign of religious persecution against Armstrong, and that the sentences punished him for his religious expressions in free exercise of his right to freedom of religion. The Court of Appeal then did not have authority to declare Armstrong "foreclosed" from demonstrating what is in the record before that Court, and what was in the record before the trial court when that court ruled the sentences unconscionable and remitted them.

2. Because of the nature of religious liberty, it cannot but be an exception to res judicata and collateral estoppel if raised as a defense at any time, and res judicata and collateral estoppel cannot be relied upon to prevent the raising of religious liberty as a defense at any time.

There is no suggestion from Scientology that what Armstrong expresses, for which Scientology wants him jailed and fined, are not or cannot be his religious expressions of his religious beliefs about a religion. They have also always been Armstrong's religious expressions of his religious beliefs about a religion, from the day Scientology sought to suppress those religious expressions by contract. Scientology does not argue, of course, that it is not a religion.

Scientology's position is that Armstrong is prohibited from expressing his religious expressions about the Scientology religion by contract, and by Judge Thomas' injunction, and that it doesn't matter if they *are* Armstrong's religious expressions. Scientology's position, since it got Armstrong's appeal of Judge Thomas's injunction dismissed in 1997, is that Armstrong is barred by res judicata and collateral estoppel from asserting his religious freedom defense to which Judge Thomas did *Dooley*. Armstrong's position, supported by law and logic, is that an individual being deprived of his religious liberty cannot lawfully continue to be deprived of that religious liberty because the deprivation of his religious liberty has gone on too long to be stopped, or for any length of time.

In the Scientology v. Armstrong legal war, this position grows in strength and authority because Armstrong's religious expressions have increased, his world wide wog and Scientologist audience has increased, and his religious persecution at the hands of the Scientology legions has increased. If such things can be added, his human right of religious freedom to expose and oppose that religious persecution has increased beyond his wildest imagination.

Before Scientology brought him to America, and consequently submitted him to U.S. laws, Armstrong never conceived that any U.S. courts, especially California courts, would ever prostrate themselves to abet the jailing, fining and

financial ruin of a citizen for expressing his religious experiences and thoughts and for protecting himself, his family and citizen class from religious persecution. He also never conceived of the religion he joined and his co-religionists being so diabolical that they would create contracts to get wog courts to do exactly that and then force their victims to sign these contracts. Armstrong's position, however, in alignment with law, logic and his own theology, is that the right of religious freedom is always maximal, cannot lawfully be decreased by contract, and therefore cannot be increased.

Armstrong is not claiming that he has some inalienable right to express his religious expressions everywhere and at all times, if a stupid straw man interpretation is given to such a concept. He is claiming that he has a right that cannot lawfully be taken away by contract, at least in any reasonably free and sane society, to express his religious expressions somewhere and sometime, and certainly as called by God.

There is no question of anything Armstrong is saying or doing depriving anyone else of any of their lawful rights, or being a threat to anyone's safety, or to the public order. In fact, he believes that he is seeing to and increasing everyone's safety, and arguably even good order, by expressing the expressions he has been called to express. He contends that the record in this case and available to this Court shows that from the day he left Scientology, almost 24 years ago, Armstrong has not done anything that was a threat to safety, order, morality or national security. Although Armstrong's, and everyone's, right to religious freedom is always maximal, because no California court so far has been willing to address the religious liberty issue and because Armstrong *has* continued to study and address the issue, his certainty of the correctness of his position has increased.

Armstrong is an average common wog. He is not a lawyer, not trained in law, and does not study law. He is a Christian, studies religion and is a religionist, as religious as the next wog, or Scientologist, and he has his own thoughts, beliefs, and religious activities.

Armstrong founded his own church in 1986 and renamed and restructured it as the Church of Wogs (“CoW”) in Canada and around the world. CoW is to wogs as Scientology is to Scientologists. CoW promotes what is good, true and holy in wogs and in the wog world and defends wogs against invalidation, suppression, attack and extermination. The only religion and organization that invalidates, suppresses and attacks wogs as wogs and seeks their extermination is Scientology. Armstrong’s words about the wog world, wogs, Scientology and Scientologists constitute CoW’s religious scriptures, just as L. Ron Hubbard’s words about the wog world, wogs, Scientology and Scientologists constitute Scientology’s religious scriptures.

Along with his wife Caroline Letkeman Armstrong has also founded the Suppressive Person Defense League (“SPDL”), dedicated to defending SPs against religious persecution from Scientology and Scientologists and to educating the wog world about the “Suppressive Person” religious doctrine that underlies the persecution. Ms. Letkeman is also a declared SP, and also a target of Scientology covert and overt intelligence operations, threats and black PR.

Armstrong and Ms. Letkeman have built and maintain three Internet sites that express their Scientology experiences and beliefs. Much of their defense against religious persecution by the Scientology religion and its agents is waged on the Internet by documenting that persecution. Armstrong and Ms. Letkeman have webbed a great number of documents relating to Scientology’s litigation campaign against Armstrong’s, including all the documents filed in this case in the trial court, the Court of Appeal and now this Court.

<http://www.gerryarmstrong.org/50grand/legal/index.html>

Scientology is waging a religious war or jihad on SPs. At its core and in operation the Scientology religion is an intelligence organization, thus many of its operations and channels of attack on SPs in that war are secret or cloaked and deal in disinformation and black PR. Armstrong was a Scientology intelligence operative close to Mr. Hubbard in the Scientology religion.

Scientology's Armstrong contract is not at all a settlement agreement between the parties to achieve the cessation of hostilities, but a declaration of religious war by the religion on an apostate. The contract's utterly one-sided clauses, which Judge Duryee focused on very pointedly, and which the Court of Appeal ignored, are prima facie evidence that the contract is Scientology's fatwa to all the contract's beneficiaries to ruin and obliterate Armstrong.

Scientology and all the contract beneficiaries can attack Armstrong in any way they want. He must take their abuse and remain silent. He must pay Scientology \$50,000 per utterance if he does defend himself. There is no such penalty for Scientology. The contract, in fact, is an invitation and powerful incentive to Scientology and Scientologists to attack Armstrong, his family, friends and fellow SPs just because he cannot defend himself or other people in the same way that other citizens can defend themselves and their loved ones. The contract is an ungodly license for a religion and its adherents to hunt a human being, a common average wog whom the Scientology religionists are commanded by religious scripture and by other religious edicts or fatwas to hate and attack.

After confirming the contract's one-sided conditions that evidenced its unlawful religious jihad purpose, Judge Duryee then limited or remitted the legally unconscionable results that Scientology sought in its effort to enforce those one-sided unconscionable contractual conditions. By ignoring the one-sidedness and the other clear indicia of the contract's unconscionability and reinstating the remitted unconscionable result, the Court of Appeal cannot but be abetting Scientology's jihad on SPs.

Armstrong has found no case of religious persecution in the United States in the modern or post modern ages as ridiculous, cruel or grossly willfully violative of U.S. civil rights laws as this case. This is a new phenomenon in the U.S., using commercial contract law to bring back the medieval right and custom of religions or religious groups to persecute and destroy people whose religious expressions are not what the religion's leaders insist they be. In Scientology,

using the wog law system to harass and ruin the organization's SP victims and targets is compelled by religious scripture.

Outside the U.S., where Armstrong lives of course, religious persecution where people were jailed, or fined or ruined for expressing their religious experiences or religious beliefs was more common. Consequently in January 1998 the Congress passed the *International Religious Freedom Act* to compel the Government's branches to take a principled stand on behalf of religious freedom and against religious persecution in all foreign countries.

The IRFA is particularly applicable in this case because virtually all of Armstrong's religious expressions after January 1998 have been expressed in foreign countries. The IRFA is also helpful in understanding why contracts like Scientology's are an impermissible deprivation of religious freedom within the U.S., and why religious freedom must be an exception to *res judicata* and collateral estoppel. The IRFA states:

Article 18 of the Universal Declaration of Human Rights recognizes that "Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance." Article 18(1) of the International Covenant on Civil and Political Rights recognizes that "Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching". Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government. 22 U.S.C. §§ 6401(a)(3)

Clearly, for a person to possess freedom of thought, conscience, and religion, he would have to possess the freedom to change his religion or beliefs. His religion or beliefs can only manifest in expressions, which he must also

possess the right to change. Armstrong and every person has the right to change his religion, beliefs and mind about all these things every second of every day forever. Res judicata and collateral estoppel logically cannot be used to bind someone to a particular form of religious conduct or prohibit a particular form of religious conduct, because the person must be able and free to engage or not engage in that conduct, or change his mind about that conduct or about the religious contract that compels or prohibits that religious conduct.

The IRFA condemns both government-sponsored and government-tolerated violations of people's rights to religious freedom. Scientology is a government-tolerated violator of people's rights to religious freedom in the U.S, as this case and the California courts' toleration and abetment of Scientology's violations of people's rights to religious freedom demonstrates.

There are no national or international Trade Secret Freedom Charters or laws protecting the freedom of persons to express or divulge trade secrets. Religious freedom is a very different matter, which, because of its nature, simply lawfully may not be abridged by contract or by court orders. If ITT had chosen to call itself a religion, declare that it is organized for solely religious purposes, declare all its activities religious and its manuals scripture, ITT could not have silenced Mr. Dooley about his necessarily religious experiences and religious knowledge in the ITT religion. Scientology insists that it is a religion, and therefore cannot silence Armstrong about his religious experiences and beliefs as if they were commercial trade secrets.

3. The Court of Appeal did not deal with what Judge Duryee did, but dealt with something she didn't.

A. Judge Duryee correctly applied C.C.C. §1670.5 in the consolidated cases and combined matters before her, specifically acting to limit the application of the unconscionable clauses in Scientology's contract as to avoid any unconscionable result.

Armstrong has demonstrated at length in his appellate briefs in this case that Judge Duryee could not but have been applying C.C.C. §1670.5 in both limiting the liquidated damages to \$500,000, where Scientology sought \$10,050,000, and in remitting or discharging the contempt punishment. Armstrong's position is that the \$500,000 is also unconscionable, but that issue is not before this Court.

Judge Duryee specifically identified the indicia of unconscionability, one-sidedness, endlessness, trickiness. She used the unconscionable word in pronouncing her judgment at trial, and she used the word in her judgment, which she linked to the order re sentences.

The Court of Appeal decision does not mention C.C.C. §1670.5, although it could not be avoided in Armstrong's briefs, and acknowledges no effect of the unconscionability ruling on the punishments the Court reinstates. The Court of Appeal moreover misstates the unconscionability judgment. If the misstatement is not made, the Court would have had to deal squarely with the unconscionability of the punishment the Court was reinstating for other nonexistent reasons.

The Court of Appeal decision states:

The court, however, found that it would be unconscionable to "punish" Armstrong with liquidated damages in excess of the \$800,000 he received as a benefit under the settlement agreement.

Judge Duryee's judgment states:

Mr. Armstrong received a benefit under the settlement agreement of \$800,000. It would be unconscionable to punish him beyond what the benefit was that was conferred to him.

It is clear that Judge Duryee was not, as the Court of Appeal has characterized it, limiting the unconscionable punishment Scientology sought to

inflict on Armstrong to liquidated damages. Her intention is made unavoidable by her linking of the contempts punishments to the judgment.

The sentences imposed in the two prior contempt actions, in Marin Superior Court Case No. 152229/157680, which is consolidated herewith, are discharged upon entry of judgment against Armstrong herein.

On the order of contempt issued July 13, 2001, Armstrong is sentenced to five days in jail and a fine of \$1,000. The fine is concurrent with the judgment

The decision states that Judge Duryee didn't have jurisdiction to alter the sentences imposed against Armstrong because the court's orders in the contempt proceedings are final and conclusive and not appealable orders. There is, however, no such exception to C.C.C. §1670.5. There is no law stating that a court may *not* act to prevent an unconscionable result if that unconscionable result is jailing and fining someone for contempt of court. The position that punishment cannot be remitted if found to be unconscionable defies all logic.

To say, which the Court of Appeal is saying in what it is and isn't saying, that a set of jail sentences ruled unconscionable and remitted, must be reinstated because it is too late for a California Superior Court Judge to have her conscience shocked, and consequently make such a ruling, also defies all logic.

Unconscionability in a contract is a very serious matter with very serious legal significance and consequences. Scientology here is seeking to avoid the consequences and they should not be permitted to get away with it. They are getting away with it by enforcing the unconscionable. The Court of Appeal is, with that Court's avoidance of the profound issues including C.C.C. §1670.5 that Armstrong raises in his briefs, ~~to be~~ abetting the unconscionable.

The Court of Appeal also has avoided the effect of Scientology's dismissal of its appeal from the judgment, which states that the very punishment Scientology sought, and which the Court of Appeal has granted, was unconscionable. The

dismissal, in fact, should have immediately barred Scientology from proceeding with its writ petition to have the unconscionable punishment reinstated.

B. The correct remedy and procedure in this case is mandated by C.C.C. 1670.5, specifically the reasonable opportunity to present evidence as to the contract's commercial setting, purpose, and effect to aid the court in making the unconscionability determination.

Scientology should have availed itself of that opportunity afforded it by C.C.C. §1670.5(a). Scientology erroneously jumped the gun and filed its appeal and writ petition. The Court of Appeal should have sent the matter back to the trial court to conduct an evidentiary hearing on the contract's commercial setting, purpose, and effect.

Why Scientology is avoiding the statutorily mandated evidentiary hearing on the contract's commercial setting, purpose, and effect is clear. Such an evidentiary hearing would show that Scientology unlawfully coerced and deceived Armstrong into signing its contract, that Scientology fair gamed and compromised his attorney, that there were no negotiations whatsoever about the reasonableness of the obscene liquidated damages penalty, and that there is no relationship whatsoever between that penalty and the actual damage Armstrong causes with each expression of his religious beliefs he expresses.

But Armstrong too is to be afforded an evidentiary hearing pursuant to C.C.C. §1670.5(a), and he has made this claim and demand throughout this consolidated appellate case.


VI.

CONCLUSION

What is completely and glaringly missing in this case is a fair hearing or trial on the merits, including the merits of Armstrong's profound human rights defenses. What should be reinstated, and what this Court has jurisdiction to reinstate, is not the unconscionable jail sentences and fines Scientology wants inflicted on Armstrong, but his defenses against such unconscionable punishment.

For the reasons stated herein, Armstrong respectfully requests this court grant review to determine the issues presented above.

Dated: November 25, 2005



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CERTIFICATE OF LENGTH

Pursuant to Rule 28.1(d)(1) of the California Rules of Court, respondent Gerry Armstrong certifies that the number of words in this brief, according to the word count of the computer program used to prepare the brief, is 8,398 words.

Gerry Armstrong



Filed 10/19/05

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY
INTERNATIONAL,

Petitioner,

v.

THE SUPERIOR COURT OF MARIN
COUNTY,

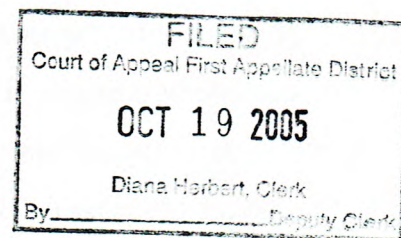
Respondent;

GERALD ARMSTRONG,

Real Party in Interest.

A107095

(Marin County Super. Ct. Nos.
15229, 157680, CV021632)



In a petition for writ of certiorari, the Church of Scientology International (CSI) seeks an order compelling the trial court to reinstate sentences imposed upon Gerald Armstrong in earlier contempt proceedings. We grant the petition in part.

I. FACTUAL BACKGROUND

In December 1986, the parties entered into a settlement agreement under which CSI paid Armstrong, a former Church member, \$800,000 in exchange for his dismissal of claims against CSI. In addition, pursuant to paragraph 7.D. of the agreement, Armstrong agreed to maintain confidentiality concerning his experiences with CSI and not to publish orally or in writing any information about his experiences with or knowledge of CSI and its affiliated individuals and organizations. Paragraph 7.D. also contained a liquidated

court awarded CSI costs of \$334,671.75.² This court dismissed Armstrong's appeal from that judgment.

On June 5, 1997, the court found Armstrong in contempt of its order enjoining him from assisting others in litigation against CSI. The court fined Armstrong \$1,000 and ordered that he be confined in the county jail for a period not to exceed 48 hours. Armstrong did not appear at the hearing in the contempt proceedings and did not file any opposition or evidence. The court entered a second order of contempt on February 20, 1998, finding that Armstrong violated the injunction in 13 separate incidents between September 2, 1997 and November 26, 1997, including disseminating a documentary work about CSI on the Internet. The court fined Armstrong \$200 for each violation for a total of \$2,600 and ordered that he be confined a total of 26 days in the county jail. Again, Armstrong failed to appear at the contempt proceedings. A third order to show cause re contempt proceeding was issued in December 2000. Armstrong filed an opposition to the court's order to show cause but did not appear at the hearing. In his opposition, Armstrong admitted that he had violated the injunction but argued that he signed the settlement agreement under duress and that the injunction was unlawful. Armstrong further averred that he was living in British Columbia, Canada. At the hearing on January 17, 2001, the court found that the injunction was valid and that Armstrong violated it by making 131 postings on the Internet violating one or more provisions of the injunction, that he spoke in violation of the order at a public gathering in Florida on December 5, 1999, and that he gave a radio interview on December 10, 1999 that violated the injunction. The court noted that there were two outstanding warrants for Armstrong which resulted from the two previous contempt proceedings and deferred imposition of punishment on the present contempt pending Armstrong's apprehension.

On April 2, 2002, CSI filed another action for breach of contract against Armstrong again seeking to recover liquidated damages for Armstrong's breaches of the settlement agreement. CSI alleged 201 breaches of paragraph 7.D. of the agreement

² It appears this judgment debt was never paid and, ultimately, was discharged in bankruptcy.

II. DISCUSSION

CSI petitions for a writ of certiorari to address the court's order on the contempt proceedings against Armstrong.³ As CSI acknowledges, the court's order in the contempt proceedings is final and conclusive and is not an appealable order. (Code Civ. Proc., § 1222; *Butler v. Butler* (1967) 255 Cal.App.2d 132, 135-136.) The court's order, therefore, may be reviewed only upon certiorari if it is in excess of the court's jurisdiction. (*Taylor v. Superior Court* (1942) 20 Cal.2d 244, 246.) CSI has standing to seek such review. (*Id.* at p. 247 [since petitioner is person for whose protection the injunction was granted, he is a party beneficially interested in the ruling complained of within the meaning of Code Civ. Proc., § 1069].)

CSI is correct that the trial court had no jurisdiction to alter the sentences imposed in the first two contempt proceedings. “[J]udgments and orders of a court or judge made in cases of contempt are final and conclusive ([Code Civ. Proc.,] § 1222), and the court or judge retains no jurisdiction to alter a completed judicial act.” (*County of Lake v. Superior Court* (1977) 67 Cal.App.3d 815, 818.) Nor is there evidence to support Armstrong's claim that what occurred was actually a remission of punishment. No motion or request to remit was made at the hearing; the court merely announced its intention to “discharge the jail and the . . . contempt punishment[] with the entry of the judgment of \$500,000.” After brief arguments from counsel, the court issued its order that the contempts were “deemed served.” In any event, there were no circumstances in the record justifying a remission of the sentences. “In unusual cases, even though a contempt judgment is sustained, if the violation was the result of an honest mistake of law, *and compliance is ultimately obtained* [italics added], either the trial or appellate court may grant a remission of punishment [italics omitted].” (8 Witkin, Cal. Procedure (4th ed. 1997) Enforcement of Judgment, § 347, p. 355; see *City of Vernon v. Superior Court* (1952) 39 Cal.2d 839, 842-843.) Although Armstrong offers many arguments to support his position his sentences should have been remitted—for example, that his

³ CSI appealed from the judgment for liquidated damages but subsequently moved to dismiss the appeal. We granted the motion.

arose”]; *Bailey v. Superior Court* (1956) 142 Cal.App.2d 47, 54 [court erred in awarding compensatory damages in contempt action]). The court simply had no authority to order the fine in the contempt proceeding “concurrent” with the judgment in the civil action.

III. DISPOSITION

The petition for writ of certiorari is granted in part. The trial court is directed to reinstate the sentences previously imposed on Armstrong for the contempt citations of June 5, 1997 and February 20, 1998 and to reinstate the fine on the third contempt citation. The parties are to bear their own costs.

PROOF OF SERVICE

I am employed in the Province of British Columbia, Canada. I am over the age of eighteen years and am not a party to the above-entitled action. My business address is #1-45950 Alexander Avenue, Chilliwack, B.C. V2P 1L5.

On November 25, 2005 I served the following documents:

PETITION FOR REVIEW

on the following persons on the date set forth below, by placing true copies thereof enclosed in sealed envelopes addressed as stated on the service list, as follows:

XX By Overnight Courier

California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102

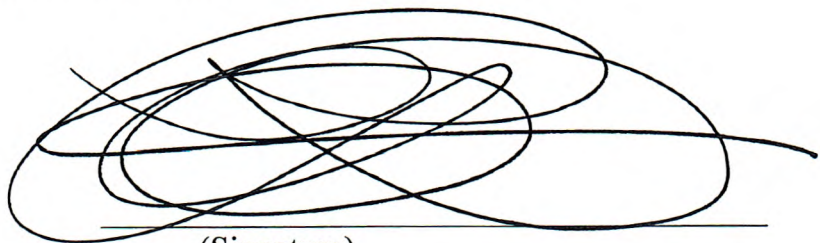
Clerk of the Superior Court
Marin County Superior Court
3501 Civic Center Drive
San Rafael, CA 94913
U.S.A.
(Hon. Lynn Duryee)

Kendrick Moxon
MOXON & KOBRIN
3055 Wilshire Blvd., Suite 900
Los Angeles, CA 90010

I declare under penalty of perjury under the laws of Canada, the United States, and the State of California that the above is true and correct.

Executed on November 25, 2005 at Chilliwack, B.C., Canada

Caroline Letkeman

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is written over a horizontal line.

(Signature)